

ARTICLE 19

Tajikistan: Law on Television and Radio Broadcasting

August 2015

Legal analysis

Executive summary

In August 2015, ARTICLE 19 analysed the Law on Radio and Television Broadcasting of the Republic of Tajikistan ('the Law') for its compliance with international standards on freedom of expression.

ARTICLE 19 acknowledges that the Law has a number of positive features. In particular, it explicitly declares that its aim is to implement "freedom of expression and the rights of the citizens to receive full, reliable and operative information, to open and free discussion of social processes." It also provides for some protection of the editorial independence of television and radio companies and also refers to the right to information.

Nonetheless, the Law fails to meet freedom of expression and information standards in a number of areas.

ARTICLE 19 believes that Tajikistan's current preparations for the digital switchover of radio and television broadcasting present a good opportunity for updating legislation in this area. We therefore urge the Government of Tajikistan to consider our recommendations to bring the Law into conformity with the country's international obligations. In particular, the creation of an independent regulatory authority would constitute a major step towards stronger protection of freedom of expression in Tajikistan. ARTICLE 19 believes that the creation of such an authority is a necessary condition for the success of the digital switchover.

We also urge the Government of Tajikistan to initiate open, transparent, and participatory consultation processes regarding all aspects of the digital switchover, including radio spectrum management, allocation of licenses, universal access, digital dividend, pluralism and media concentration, and the remit of public service media.

Summary of recommendations

1. The Law should include a specific and detailed provision declaring that the regulation of television and radio broadcasting must occur within the framework of international laws, and that any restriction must comply fully with international freedom of expression standards;
2. The Law should state that the right to information belongs to all people in Tajikistan, and not just to citizens;
3. Article 3, which prescribes the principles which should guide broadcasting activities, and Article 6, which protects 'the creative activity' of radio and television companies from interference by national or local public bodies of the Law, should be amended so as to further promote respect of the freedom and editorial independence of media companies, including from commercial influence, and to refer concerns regarding the quality of information and professional ethics to an appropriate regulatory framework.
4. The 'Committee on Television and Radio' should be replaced with a truly independent regulatory authority, established in conformity with all international standards. In particular, legislation should provide that this authority is fully independent of both the Government and commercial interests. The Law should also guarantee the independence of the regulatory authority in legal status, remit, funding, composition of the Board, and its accountability;
5. The legislation should ensure the consistency of independent regulation of broadcasting activities among responsible authorities, or assign all responsibility for the regulation of broadcasting sector to one independent regulatory body;

6. Instead of listing a series of principles regarding journalistic ethics, the Law should provide an independent regulatory authority with the power to prescribe administrative codes of conduct for broadcasters. These codes should be adopted through an open, transparent, and participatory consultation that includes all stakeholders. Furthermore, these codes of conduct should not impose criminal or civil liability;
7. Alternatively, the Law should provide for a transparent, open, and participatory process to prepare and set up a system of self-regulation;
8. The Law should list the general principles applicable to broadcast media during elections, leaving the adoption of more detailed rules to an independent regulatory authority.
9. Article 28 of the Law, which lists categories of content prohibited by law, should be revised in accordance with international standards;
10. The Law should provide for the complete transformation of state media into independent public service media, and provide a clear definition of its remit and funding;
11. The Law should specify that the planning and allocation of frequencies should allow for a balanced, three-tiered media landscape composed of public service media, commercial media, and local and community media;
12. Article 10, which requires the registration of media houses, should be removed from the Law in its entirety;
13. The Law should provide a more accurate and detailed procedure for use by media houses of different types of communication networks, and, where relevant, provide for a unique licensing process;
14. Article 34 of the Law, on the accreditation of foreign journalists, should be amended. Accreditation should be required only if, due to limited space, not all interested journalists can attend a meeting, or follow the activities of a particular body. The legislation should provide safeguards against arbitrary refusals of accreditation, such as clear accreditation rules. Accreditation should be overseen by an independent body, such as a journalists' union, and journalists should be granted a right to appeal refusals of accreditation to a court.



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Introduction

In August 2015, ARTICLE 19 analysed Tajikistan's Law on Television and Radio Broadcasting (the Law)¹ in the light of international standards on freedom of expression and information. Given Tajikistan's commitment to switch from analogue to digital TV and Radio broadcasting in 2015, it is important to assess the existing law on television and radio broadcasting in order to propose recommendations that can both improve existing legislation and ensure the success of the digital switchover in a democratic society.

ARTICLE 19 acknowledges that the Law has some positive features. In particular, the Law states that it aims to “[implement] freedom of expression and the rights of citizens to receive full, reliable and operative information [and] to open and free discussion of social processes.” In addition, the Law provides for some protection of the editorial independence of television and radio companies.

Despite these positive elements, the Law fails to meet the requirements of international standards on freedom of expression and information in a number of areas. A major shortfall is the lack of a truly independent regulatory authority – a factor of utmost importance for the regulation of broadcast media in a democratic society. Such an authority has an important role to play in the regulation of radio and television in the analogue world (such as for the rules applicable in elections) but is also a necessary condition of a digital switchover.

ARTICLE 19 further observes that protections for the freedom of media houses should be reinforced. In addition, local and community radio should be given the opportunity to find their place in the media landscape, both in the analogue world and in future digital networks.

ARTICLE 19 offers detailed recommendations about how to bring the Law into full compliance with international standards. We urge the Government of Tajikistan to consider these recommendations in its review of the Law and stand ready to further assist the Government in its process of reforming the legislation in this important area.

¹ ARTICLE 19 has worked on the basis of an unofficial translation of the Law. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation.

International standards on freedom of expression

Right to freedom of expression

The right to freedom of expression is protected by a number of international human rights instruments by which Tajikistan is bound, in particular Article 19 of the Universal Declaration of Human Rights (UDHR)² and Article 19 of the International Covenant on Civil and Political Rights (ICCPR).³

Freedom of expression is also guaranteed in various OSCE standards agreed to by Tajikistan, such as the Helsinki Final Act,⁴ the Final Document of the Copenhagen meeting of the human dimension of the OSCE,⁵ the Charter of Paris agreed in 1990,⁶ the final document of the 1994 Budapest CSCE Summit,⁷ and the Istanbul Summit Declaration.⁸

The importance of freedom of expression is also reflected in the three existing regional instruments regarding the protection of human rights: the American Convention on Human Rights,⁹ the European Convention on Human Rights (ECHR),¹⁰ and the African Charter on Human and Peoples' Rights.¹¹ These instruments provide comparative guidance of the content and application of the right to freedom of expression, and informs the interpretation of Article 19 ICCPR, which is binding on Tajikistan.

The guarantee of freedom of expression applies with particular force to the media, and international and regional bodies have repeatedly highlighted the importance of free media in the political process.¹²

The right to freedom of expression is not absolute; however, it may only be restricted in very limited circumstances. Any restrictions must:

- *Be prescribed by law*: a norm must be formulated with sufficient precision to enable all individuals to regulate their conduct accordingly, and must be made accessible to the public. A law cannot confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.¹³

² UN General Assembly Resolution 217A(III), adopted 10 December 1948. The UDHR, being a UN General Assembly Resolution, is not directly binding on states. However, parts of the Resolution, including Article 19, are widely regarded as having acquired legal force as customary international law since adoption of the Resolution in 1948.

³ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc.

⁴ OSCE, Helsinki, 1 August 1975.

⁵ Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990, in particular paras 9.1 and 10.1.

⁶ Charter of Paris for a new Europe, CSCE Summit, November 1990

⁷ Towards a Genuine Partnership in a New Era, CSCE Summit, Budapest, 1994, paragraphs 36-38.

⁸ OSCE Istanbul Summit, 1999, para 27; or the Charter for European Security, 1999, para 26.

⁹ Adopted 22 November 1969, in force 18 July 1978.

¹⁰ ETS Series No. 5, adopted 4 November 1950, in force 3 September 1953.

¹¹ Adopted 26 June 1981, in force 21 October 1986.

¹² See, e.g. UN Human Rights Committee, General Comment 25, 12 July 1996; the European Court of Human Rights (European Court), *Castells v. Spain*, 24 April 1992, Appl. No. 11798/85; or the Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC5/85, 13 November 1985, Series A, No. 5.

¹³ General Comment No. 34, CCPR/C/GC/34, adopted on 12 September 2011.

- *Pursue a legitimate aim*, as explicitly enumerated in Article 19(3) ICCPR, namely: respect for the rights or reputation of others, the protection of national security, public order, public health, or public morals. Restrictions on other grounds are not permissible under international law.¹⁴
- *Be necessary and proportionate to the protected aim*. Legislators and law enforcement bodies must balance the right to freedom of expression with other rights and interests and assess whether the circumstances justify a restriction of the freedom of expression. Restrictions must not be excessive. Any restriction must be appropriate, the least intrusive option available, and proportionate to achieving the protected interest or legitimate aim.

Media regulation and international standards

The right to freedom of expression applies with particular force to the media.¹⁵ It is imperative that the media be permitted to operate independently of government control. The primary aim of media regulation should be to promote the development of an independent and pluralistic media. This is necessary for upholding the public's right to receive information from a variety of sources.

Regulation of the media presents particular problems. On the one hand, freedom of expression requires that the government refrain from interference. On the other, Article 2 ICCPR obliges States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that States are required not only to refrain from interfering with rights, but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under a duty to ensure that citizens have access to diverse and reliable sources of information on topics of interest to them. A crucial aspect of this positive obligation is the need to promote pluralism within, and ensure equal access to, the media.¹⁶

The Human Rights Committee (HR Committee) has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance ‘national unity’ violate freedom of expression.¹⁷

¹⁴ The UN Human Rights Committee has expressed concerns regarding laws on such matters as disrespect for authority, protection of the reputation of a monarch or head of state, and disrespect for flags and symbols on the basis that they do not pursue any of the legitimate interests set out in Article 19 (3); General Comment No. 34, op.cit. para. 38.

¹⁵ For example, the European Court has stressed that “freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders ...it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society;” *Thorgeirson v. Iceland*, 25 June 1992, Appl. No. 13778/88, para. 63. It has also stated that “[it is incumbent on the press] to impart information and ideas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive these. Were it otherwise, the press would be unable to play its vital role of “public watchdog;” *Jersild v. Denmark*, 23 September 1994, Appl. No. 15890/89, para. 31. Similarly, the Inter-American Declaration on Human Rights, in its Preamble, stipulates that “freedom of the press is essential for the full and effective exercise of freedom of expression and is an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information.”

¹⁶ European Court, *Informationsverein Lentia v. Austria*, 24 November 1993, Appl. Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, para. 38.

¹⁷ HR Committee, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism¹⁸ and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression.

In order to promote pluralism and protect the right to freedom of expression, it is imperative that the media operates independently of government control. This can be ensured in various ways:

- First, government regulations – laws and bylaws – regarding the media should be adopted only when necessary. For example, most established democracies do not have specific print media laws because, in contrast to broadcast media where there are technical constraints on the number of channels, print media provides few distinctive features which demand a regulatory response. Laws of general application (e.g. defamation laws, privacy laws, laws regulating the right of reply and the confidentiality of journalistic sources) apply to print media. As none of these matters raise concerns unique to the print media, it is not necessary to dedicate a law exclusively to the print media.
- Second, when media regulation is necessary, laws and bylaws must include safeguards against governmental control. Any public body with regulatory powers in the media or telecommunications sectors should be fully independent of the government, and protected against interference by political or commercial interests. Without this, the system for media regulation can be easily abused for political or commercial purposes. Three special rapporteurs on freedom of expression have therefore recommended:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input, and is not controlled by any particular political party.¹⁹

- ARTICLE 19 has compiled the relevant principles on broadcasting in its publication, 'Access to Airwaves'.²⁰ Practical guidance on the establishment and guarantee of the independence of media regulatory bodies can also be found in recommendations made within the Council of Europe. For example, recommendations made by the Committee of Ministers of the Council of Europe, on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector²¹ include the following guidelines:

Member States should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.

The duties and powers of regulatory authorities for the broadcasting sector, as well as the ways of making them accountable, the procedures for appointment of their members and the means of their funding should be clearly defined in law.

¹⁸ See Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985.

¹⁹ [Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression](#), 18 December 2003.

²⁰ ARTICLE 19, [Access to the Airwaves: Principles of Freedom of Expression and Broadcast Regulation](#), March 2002.

²¹ [Recommendation \(2000\) 23](#), adopted 20 December 2000.

The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.²²

- Finally, independent media professionals should develop standards for professional journalism and a code of ethics, both of which should be voluntarily complied with. Self-regulatory media bodies and press councils are responsible for ensuring that the media, including journalists, comply with the law, and for providing remedies to victims of violations.

²² *Ibid.*

Analysis of the Law

ARTICLE 19 acknowledges that there are positive features in the Law. In particular:

- It explicitly states that it is aimed at “the implementation of freedom of expression and the rights of the citizens to receive full, reliable and operative information, to open and free discussion of social processes” (Preamble and Article 3);
- It provides for some protection of the editorial independence of television and radio companies (Article 6);
- It also recalls the existence of legislation on the right to information (Article 20).

Nonetheless, on a number of important issues, the Law fails to meet the requirements of international standards on freedom of expression and information. The following sections highlight how these issues should be addressed in order to be brought into conformity with the international obligations of Tajikistan.

Reference to international standards

The Law specifies that legislation on television and broadcasting is comprised of national legislation and international legal acts recognised by the Republic of Tajikistan (Article 4) and that the Government shall ensure the implementation of international obligations of the Republic of Tajikistan (Article 5).

The inclusion of a reference to the country's duties under international law is certainly a positive feature of the Law. However, ARTICLE 19 believes that it should be further elaborated upon as the international obligations that bind Tajikistan include a duty to fully respect and implement freedom of expression and information. The inclusion of an unambiguous reference in this sense is of the utmost importance.

The Law describes the principles that should guide broadcasting activities, including the right of citizens to information, freedom of expression, objectivity of information, credibility, respect of universal rules of morality, and observation of professional ethics (Article 3). ARTICLE 19 makes several observations in this respect:

- Under international standards, the right to information should not be limited to citizens, as it is a universal right that belongs to anyone regardless of nationality or citizenship.
- Moreover, the most important principle guiding the activities of media houses should be respect for their freedom and editorial independence; meanwhile, concerns about the quality of information and professional ethics are restrictions to freedom of expression that call for an appropriate regulatory framework (see below on regulation and self-regulation).
- Finally, morality is a broad and evolving concept that easily lends itself to arbitrary or subjective interpretation. As such, it should be avoided wherever more precise and operational wording may serve similar purposes.

On a similar note, ARTICLE 19 observes that the Law protects 'the creative activity' of radio and television companies from interference by national or local public bodies (Article 6). This

protection might be better framed as a safeguard of freedom and editorial independence of the media and should extend to protection from influence by commercial entities:

The principle of editorial independence, whereby programming decisions are made by broadcasters on the basis of professional criteria and the public's right to know, should be guaranteed by law and respected in practice. It should be up to broadcasters, not the government, regulatory bodies or commercial entities, to make decisions about what to broadcast.²³

Recommendations

- The Law should include a specific and detailed provision that international law on freedom of expression and information constitutes the relevant legal framework within which a legislator can organise the regulation of television and radio broadcasting, and that any restriction must comply fully with international freedom of expression standards;
- The Law should state that the right to information belongs to all, and not just to citizens;
- Articles 3 and 6 of the Law should be reviewed in order to further promote the respect of freedom and editorial independence of media companies, including from commercial influence, and to refer concerns about quality of information and professional ethics to an appropriate regulatory framework.

The regulation of broadcasting: independent regulatory authority

The Law provides that the “regulation and control” of radio and television broadcasting shall be the responsibility of the Government and shall be exercised through a governmental Committee on Television and Radio (Article 5). Decisions of the Committee shall be endorsed by the Government. The Committee holds responsibility for controlling the implementation of the Law by media houses and for controlling TV and radio programmes.

ARTICLE 19 notes that the Committee is simply a subdivision of Government. In such conditions, it is not clear how the roles of the Committee and the Government differ or overlap. More importantly, the Committee is not established as an independent regulatory body.

Under international standards on freedom of expression, the independence of the regulatory authority is a necessary condition for the effectiveness of democratic regulation of broadcasting. Indeed, one of the most essential requirements under international standards relevant to broadcasting and telecommunications is that regulatory bodies should be independent, both from the government and from the sector they regulate. This requirement is expressed in a number of international standards²⁴ and the implications of independence are further detailed in ARTICLE 19's *Access to Airwaves*.²⁵

All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation, including bodies which receive complaints from the

²³ ARTICLE 19, *Access to Airwaves*, *op. cit.*, Principle 2.

²⁴ For example, the need for independence of broadcasting regulatory bodies and their protection against political or commercial interference was specifically stressed in the [2003 Joint Declaration](#) of the UN Special Rapporteur on Freedom of Expression, the OAS Special Rapporteur on Freedom of Expression, and the OSCE Representative on Freedom of the Media. For a comparative perspective, see also the Council of Europe, Committee of Ministers, [Recommendation \(2000\)23 on the independence and functions of regulatory authorities for the broadcasting sector](#), 20 December 2000 and its [Explanatory Memorandum](#); and the [Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector](#), 26 March 2008.

²⁵ ARTICLE 19, *Access to Airwaves*, *op. cit.*, Principle 10 and in general, Principles 11-17.

public, should be protected against interference, particularly of a political or commercial nature. The legal status of these bodies should be clearly defined in law. Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:

- specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
- by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
- through the rules relating to membership;
- by formal accountability to the public through a multi-party body; and
- in funding arrangements.

ARTICLE 19 underlines that the regulation of broadcasting is not synonymous with controlling the content of programmes. Under international law, the democratic regulation of broadcasting activities is generally restricted by the respect of the freedom and editorial independence of the sector and only targets a limited set of objectives and areas (such as the promotion of pluralism and diversity, or the protection of consumers).

We also observe that the Law refers to other pieces of legislation regarding the licensing of broadcasting activities (Articles 11 – 13). Licensing has traditionally offered regulators an efficient mean of ensuring that broadcasting media companies comply with, and implement, a number of public interest goals, such as the safeguarding of pluralism or the promotion of diversity. As for any authority involved in regulation, it is necessary that the regulatory authority in charge of attributing licenses and controlling the respect thereof be independent. In addition, international law has determined the requirements of independent regulation as regards the allocation of licenses: these are summed up in ARTICLE 19's *Access to Airwaves*.²⁶

In addition, ARTICLE 19 suggests that regulation should be consistent. The spreading of responsibilities across different bodies may not contribute to the efficiency of regulation.

Recommendations

- The Committee on Television and Radio should be replaced with a genuinely independent regulatory authority. Such an authority should to be set up in conformity with all international standards on independence, legal status, remit, funding, composition of its board, and accountability, including:
 - There should be an explicit pronouncement of the regulatory body's independence from the Government and the President. The Constitution and the Law should include a provision to that effect;
 - The legislation should provide for the appointment of the members of the board of the regulatory body by the Parliament through an open, participative process;
 - The legislation should define precise rules of conflict of interest for membership of the regulatory board. At a minimum, no one should be appointed who: (1) is employed in government, the civil service, a political party, or is an elected representative; (2) holds a position or significant financial stakes in the broadcast or telecommunication sectors. Members of the board should serve in their individual capacity and exercise their functions in the public interest at all times;
 - The legislation should accurately set the rules concerning the duration of the mandate, the financial conditions of its exercise, and its termination. Only the

²⁶ ARTICLE 19, *Access to Airwaves*, *op. cit.*

- appointing body should have the power to dismiss members and this power should be subject to judicial review. A member should not be subject to dismissal unless s/he:
- no longer meets the rules of incompatibility, as set out above;
 - commits a serious violation of his or her responsibilities, as set out in law, including through a failure to discharge those responsibilities; or
 - is clearly unable to perform his or her duties effectively;
- The regulatory authority should benefit from adequate, sufficient, and stable funding;
 - The regulatory authority should be held publicly accountable for its work and report back to Parliament and the public. The legislation should require the regulatory authority to produce a detailed annual report on its activities and budget, which should be publicly disseminated;
 - Wherever the regulatory authority holds the power to set rules for calls for tenders or licenses, the powers of the regulatory body should be limited to implementing the general principles set in the legislation;
 - Wherever the regulatory authority holds regulatory or legislative power, the law should define with precision the authority's areas of competence and the authority should only adopt rules through open, participative processes where media actors and civil society organisations have their say via, for example, public consultations;
 - There should be a mechanism for judicial review of all decisions adopted by the regulatory authority.
- The legislation should ensure the consistency of independent regulation of broadcasting activities among responsible authorities, or assign all responsibilities for the regulation of broadcasting sector to one independent regulatory body.

The quality of journalism

The Law presents the objectivity and impartiality of information, credibility, and the observation of professional ethics as principles which should guide the activities of radio and television companies and their staff (Article 3 – see also Articles 29 and 30). While these are legitimate concerns, it is of utmost importance that they are dealt with in an appropriate framework, which ensures respect for free expression.

In its earlier analysis of the Tajikistan's Law on Print and other Mass Media,²⁷ ARTICLE 19 expressed a strong concern about the State's imposition of professional duties on journalists. We noted that legislative responsibilities imposed on journalists are contrary to international standards and best practice. In most democratic countries, journalistic ethics is a matter for self-regulation. Experience has shown that legal regulation of ethical matters often leads to the harassment of journalists who are critical of the government. The OSCE Representative on Freedom of the Media has stated:

True ethics standards can be made only by independent media professionals, and can be obeyed by them only voluntarily. Whether passed in good will or not, any attempt to impose standards on journalists by law will result in arbitrary limitations of their legitimate freedoms, and restriction on the free flow of information in society.²⁸

ARTICLE 19 recalls that in the context of broadcasting, it is generally admitted that an independent regulatory authority may adopt codes of conduct covering such issues as impartiality and other concerns related to professional ethics. However, the codes should not

²⁷ ARTICLE 19, [Analysis of the Tajikistan: Media Law](#), October 2014.

²⁸ Miklos Haraszti, 'The Merits of Media Self-Regulation: Balancing Rights and Responsibilities', in *The Media Self Regulation Cookbook: All Questions and Answers*, OSCE, 2008, p. 15.

impose criminal or civil liability for programme content and should be developed in close consultation with broadcasters and other stakeholders.

Alternatively, issues related to the quality of information and the professional ethics of journalism may be dealt with through a self-regulatory system.

Recommendations

- Instead of listing a series of principles, the Law should provide an independent regulatory authority with the power to adopt administrative codes of conduct for broadcasters. These codes should be adopted through an open, transparent, and participatory consultation process that includes all stakeholders. Further, the codes should not impose criminal or civil liability.
- Alternatively, the Law should provide for a transparent, open, and participatory process to prepare and set up a system of self-regulation.

Elections and electoral campaigns

Article 22 of the Law gives the Central Commission on elections the power to set the procedure for the use of radio and television during electoral campaigns.

ARTICLE 19 notes that the role of media, and notably that of radio and television during electoral campaigns and elections is crucial. Citizens need to be informed about candidates, parties, and their programmes; participants in the electoral contest must be able to share their views with the public. The media also performs the important function of educating people on how to register and how to vote. As detailed in 'Access to Airwaves', the following principles should govern the regulation of broadcast media during elections:

States have an obligation to ensure that the public receive adequate information during an election, including through broadcasting, about how to vote, the platforms of political parties and candidates, campaign issues and other matters of relevance to the election. Such information should be made available through news and current affairs programmes, special election programmes, direct access political broadcasts and, where allowed, commercial political advertisements.²⁹

ARTICLE 19 reiterates that it should be the task of an independent regulatory authority to set up rules for broadcasting media. In addition, the relevant general principles (such as fair and equitable coverage, rules pertaining to direct access to airtime for candidates and political parties, or existence of a rapid redress procedure) should be enshrined in the Law.

Recommendations

- The Law should list the general principles applicable to broadcast media during elections, leaving the detailed rules to be adopted by an independent regulatory authority.

Unlawful content

Article 28 of the Law states that broadcasting media are prohibited from disclosing state secrets; from disseminating material that calls for violent overthrow or change of the constitutional order, or advocates war, cruelty, terrorism, racial or national hatred, intolerance, religious exclusiveness, or otherwise incites to committing criminal offences; from discrediting

²⁹ ARTICLE 19, *Access to Airwaves*, *op. cit.*

the honour and dignity of the State, the President, or the citizens; and from broadcasting pornography.

ARTICLE 19 recalls that even where a restriction on freedom of expression pursues a legitimate goal (as enumerated in Article 19 (3) ICCPR), it must still be demonstrated that the restriction is provided for by law, and that it is necessary. It is also worth recalling that under international standards, freedom of expression “is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society.”³⁰

ARTICLE 19 observes that there may be circumstances where the right to share and receive information on a topic of legitimate public interest prevails over a legal duty to preserve official secrecy, particularly in the case of journalists, their sources, and potential whistleblowers.

For more detail, ARTICLE 19 refers to the standards applicable to the protection of national security (fight against terrorism), which have been detailed in *the Johannesburg Principles on National security, freedom of expression and access to information*.³¹ International standards in the field of incitement have been outlined in our policy brief *Prohibiting incitement to discrimination, hostility or violence*.³²

We observe that some of the grounds for prohibition are not legally certain or accessible. Terms such as ‘state secret’, ‘incitement to hatred’, ‘terrorism’, and ‘pornography’ are vague, unclear, and susceptible to arbitrary interpretation by law enforcement bodies and the courts. Unfortunately, the Law does not cross-reference other legislation in order to clarify these terms.

Furthermore, the Law allows for the right to freedom of expression to be restricted on grounds which are not legitimate under international law. In particular, a ban on expression damaging “change in the constitutional order” is not one of the legitimate aims listed by Article 19(3) ICCPR. In a democratic society, people should be able to debate territorial issues and the political and economic independence of the Government and the State.

Also, ‘protection of the dignity of the State or the President’ is not compatible with international law, as both could prevent the legitimate discussion of political affairs.

In addition, we recall that we expressed similar concerns in our analysis of Article 6 of the Media Law of the Republic of Tajikistan.

Recommendation

- Article 28 of the Law should be revised in accordance with international standards.

³⁰ *Ibid.*

³¹ ARTICLE 19, [Johannesburg Principles on national security, freedom of expression and access to information](#), 1996.

³² ARTICLE 19, [Prohibiting incitement to discrimination, hostility or violence](#), 2012.

A three-tiered media landscape

The Law lists the “key objectives” for public media companies, including informing viewers and listeners, but also ensuring coverage of “national symbols of the Republic of Tajikistan” and the “promotion and enhancement of international relations of the Republic of Tajikistan” (Article 9).

ARTICLE 19 notes that under international standards, public media cannot be synonymous with the voice of the government or the country. Public service media companies should be independent, publicly-funded media outlets that pursue a series of objectives that cannot fully be fulfilled by private media. Their independence should be strongly established, notably through an accurate definition of their funding.

Under Article 7 of the Law, the media landscape in Tajikistan is composed of public and private media companies. Article 8 provides that public media shall have a priority right to use national networks.

ARTICLE 19 observes that local and community media also play an important role in a democratic society and should be included in the planning and allocation of frequencies. Pluralism and diversity should be promoted through a three-tiered media landscape composed of public service media, commercial media, and local and community media.

We also recall that our 2014 analysis of the Media Law³³ highlighted that there should be no obligatory registration of media houses (Article 10).

Further, Articles 14 – 18 of the Law provide for the rights of broadcasting media companies to use different communication networks (terrestrial broadcasting, cable, satellite). ARTICLE 19 suggests that the Law should provide a more accurate and detailed procedure for those rights, and where relevant provide for a unique licensing process.

Recommendations

- The Law should provide for the complete transformation of state media into independent public service media, and provide for a clear definition of their remit and funding;
- The Law should specify that the planning and allocation frequencies should allow for a balanced three-tiered media landscape composed of public service media, commercial media, and local and community media;
- Article 10 should be removed from the Law in its entirety;
- The Law should provide a more accurate and detailed procedure for the rights of media houses to use different types of communication networks, and where relevant provide for a unique licensing process.

Foreign media

Article 34 provides for the accreditation of foreign correspondents.

ARTICLE 19 notes that accreditation requirements may amount to giving journalists permission to practice their profession, and thereby interfere with the right to freedom of expression. The HR Committee has stated that the “necessity test” (see above the section on international standards), demands that an accreditation procedure should not be susceptible to political interference and should impair as little as possible the right to gather news.

³³ ARTICLE 19’s analysis of the Tajikistan Media Law, *op.cit.*

Furthermore, the number of accredited journalists permitted to attend an event may be limited only when there are demonstrable problems in accommodating all those interested. In particular, the HR Committee stated:

[I]ts operation and application must be shown as necessary and proportionate to the goal in question and not arbitrary... The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent.³⁴

Similar recommendations have been made by international mandates on freedom of expression:

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work.³⁵

The provisions of Article 34 must be revised to comply with these recommendations.

Recommendation

- Article 34 of the Law should be amended. Accreditation should be required only if, due to limited space, all interested journalists cannot attend a meeting or follow the activities of a particular body. The legislation should provide safeguards against arbitrary refusal of accreditation, such as clear accreditation rules. The accreditation should be overseen by an independent body such as a journalists' union, and journalists should be granted a right to appeal refusal of accreditation to a court.

Digital switchover

The switchover to digital technologies for broadcasting should provide media companies with the opportunity to impart more information to the public and should allow people to seek and receive more information and ideas. However, for such a transition to meet the requirements of international standards on freedom of expression, the process should be regulated by legislation containing safeguards essential for public interest, including freedom of expression and access to information. Unless certain rules are adopted, there is a risk of the digital television market being monopolised or becoming hostile to the free circulation of information, media pluralism, cultural diversity, and consumer protection.

Although it is within States' powers to regulate the transfer from analogue to digital broadcasting, governments remain obliged under international law to promote, respect, and protect freedom of expression. In the broadcasting sector, this requires the existence of legal guarantees for editorial independence, promotion of diversity, universal access and affordable access to the means of communication and reception of broadcasting services, fair and clear

³⁴ HR Committee, *Gauthier v. Canada*, Comm. No. 633/1995, 7 April 1999, para. 13.6.

³⁵ The 2003 Joint Declaration of Special Mandates. Also, the OSCE Representative on Freedom of the Media noted that "a common misconception about the accreditation system is the notion that it has a 'permissive' function – permissive in the sense that a government or other regulatory body has the right to grant, deny or revoke a journalist's accreditation. By applying the same rules to accreditation as for a work permit, the government exercises undue control over journalists;" [Special Report: Accreditation of Journalists in the OSCE Area, Observations and Recommendations](#), 25 October 2006.

licence processes overseen by an independent regulatory body, and effective public broadcasters with comprehensive public remits.

ARTICLE 19 has previously elaborated a list of principles that present States with useful guidance on the implementation of this major technological transition;³⁶ in particular:

- The obligation to regulate digital broadcasting, which includes the creation of an independent regulatory body;
- The obligation to initiate and stimulate public participation in the radio spectrum management, which means that open, transparent consultation processes should extend to media actors and civil society organisations;
- The obligation to ensure that radio spectrum management is based on objective, transparent, non-discriminatory, and proportionate criteria;
- The obligation to ensure universal access to audiovisual services, which means ensuring that all individuals and social groups, including members of minorities and disadvantaged groups in society, have access to media;
- The obligation to manage the digital dividend in the public interest;
- The obligation to ensure interoperability;
- The obligation to guarantee pluralism and prevent media concentration;
- The obligation to facilitate the digital switchover, including the provision of detailed and clear information to all sectors of the public;
- The obligation to preserve of the social remit of public service media.

We believe that these principles should also be respected by the Government of Tajikistan and incorporated either directly in the Law or other legislation.

Recommendation

- Tajikistan should use the digital switchover as an opportunity to set up an independent regulatory authority and initiate open, transparent, and participatory consultation processes regarding all aspects of the digital switchover, including radio spectrum management, allocation of licenses, universal access, digital dividend, pluralism and media concentration, and the remit of public service media.

³⁶ ARTICLE 19, [Romania: The Digital Switchover](#), December 2008.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org. For more information about ARTICLE 19's work in Tajikistan and in Central Asia more broadly, please contact Rinata Alibekova, Central Asia Project Coordinator, at rinata@article19.org.

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